

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

FABIENNE ZANON.

Case No.: 2:20-cv-02080-JCM-EJY

Plaintiff,

V.

BEAUTY BY DESIGN; RED ROCK SURGERY CENTER; ROBERT TROELL MD LTD; ROBERT TROELL; DAVID MALITZ, MD PC; DAVID MALITZ MD; and DOES and ROES 1 through 10,

Defendants.

ORDER

On June 8, 2022, the Court granted Defendants Las Vegas Surgery Center, LLC DBA Red Rock Surgery Center, Davit Malitz MD PC, and David Malitz MD’s Motion to Compel Discovery Responses.¹ Order at ECF No. 50. The Court’s Order included an award of reasonable attorney’s fees and costs. *Id.* Defendants filed their Memorandum in support of the award of fees on June 15, 2022. ECF No. 51. The due date set by the Court for a response to Defendants’ Memorandum was June 22, 2022. No response was filed.

I. Discussion

The U.S. District Court for the District of Nevada has largely adopted the hybrid lodestar/multiplier approach, used by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), as the proper method for determining the amount of attorney's fees due in most actions. The lodestar/multiplier approach has two parts. First, the court determines the lodestar amount by multiplying the number of hours reasonably expended on a motion by a reasonable hourly rate. *Hensley*, 461 U.S. at 433. To get to this calculation, the party seeking an award of fees must submit evidence supporting the hours worked and the rates claimed. *Id.* The district court will then, generally, exclude from the lodestar amount hours that are not reasonably expended because they

¹ Las Vegas Surgery Center, LLC DBA Red Rock Surgery Center, Davit Malitz MD PC, and David Malitz MD are defined herein as “Defendants.”

1 are “excessive, redundant, or otherwise unnecessary.” *Id.* at 434. Second, after calculating the total
 2 amount requested, the court may adjust the lodestar upward or downward using a “multiplier” based
 3 on factors not subsumed in the initial calculation. *Blum v. Stenson*, 465 U.S. 886, 898–901 (1984)
 4 (reversing upward multiplier based on factors subsumed in the lodestar determination); *Hensley*, 461
 5 U.S. at 434 n.9 (noting that courts may look at “results obtained” and other factors but should
 6 consider that many of these factors are subsumed in the lodestar calculation).

7 A. The Hourly Rate Charged.

8 The Memorandum filed by Defendants explains that attorney Michael Esposito drafted the
 9 documents filed with the Court for which attorney’s fees were awarded. Mr. Esposito has seven
 10 years of experience litigating commercial disputes and is recognized in Nevada as among the “legal
 11 elites.” ECF No. 51 at 4. Mr. Esposito’s billing rate on the matter was \$175 per hour. This rate is
 12 below the rate often approved by the Court for experienced associate work. *Doud v. Yellow Cab of*
 13 *Reno, Inc.*, Case No. 3:13-cv-00664-WGC, 2015 WL 5286996, at **4-5 (D. Nev. Sept. 10, 2015);
 14 *Incorp Services, Inc. v. Nevada Corporate Services, Inc.*, Case No. 2:09-cv-1300-GMN-GWF, 2011
 15 WL 3855462, at *1 (D. Nev. Aug. 29, 2011) (holding “[a]n hourly fee ranging between \$250–\$350
 16 an hour is reasonable for experienced associates in the Las Vegas legal market”); *Chemeon Surface*
 17 *Technology, LLC v. Metalast International, Inc.*, Case No. 3:15-cv-00294-MMD-VPC, 2017 WL
 18 2434296, at *1 (D. Nev. June 5, 2017) (collecting reasonable rate information for Nevada).
 19 Accordingly, the Court approves the hourly rate charged for Mr. Esposito.

20 B. The Amount of Time Spent.

21 The Court also finds the amount of time spent on the Motions to Compel is reasonable.
 22 “District courts possess the necessary discretion to adjust the amounts awarded to address excessive
 23 and unnecessary effort expended in a manner not justified by the case.” *Ballen v. City of Redmond*,
 24 466 F.3d 736, 746 (9th Cir. 2006). This includes “time spent reviewing work of other attorneys as
 25 duplicative” (*Melancon v. Harrah’s Entertainment, Inc.*, Case No. 2:08-cv-00212-RCJ-RJJ, 2010
 26 WL 11639687, at *4 (D. Nev. Feb. 26, 2010)), as well as entries on time reports that fails “to
 27 delineate what work was performed in each entry” and thus appear duplicative. *American General*
 28 *Life Ins. Co. v. Futrell*, Case No. 2:11-cv-00977-PMP-CWH, 2012 WL 4962997, at *4 (D. Nev. Oct.

1 16, 2012). Ultimately, it is always the moving party's burden to establish that the fees sought are
2 reasonable. *Soule v P.F. Chang's China Bistro, Inc.*, Case No. 2:18-cv-02239-GMN-GWF, 2019
3 WL 3416667, at *1 (D. Nev. July 26, 2019) (citation omitted). The amount of time spent for which
4 reimbursement is requested in this case totals 12 and 5/10th hours. A review of the billing records
5 demonstrate the time was spent engaged in reasonable, non-duplicative, and necessary work.

6 || II. Order

7 Accordingly, IT IS HEREBY ORDERED that the Memorandum of Attorneys' Fees (ECF
8 No. 51) is GRANTED.

9 IT IS FURTHER ORDERED that Plaintiff Fabienne Zannon **must** make payment to
10 Defendants in the following amount within **30 days of the date of this Order** unless an objection is
11 filed:

12 || \$2,193.50 in attorney's fees

14 Dated this 23rd day of June, 2022.

Elayna J. Youschah
ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE